

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 1:20-cr-189-4
Hon. Jane M. Beckering

MYKAEL LEE BOOKER,

Defendant.

1

CHANGE OF PLEA HEARING

BEFORE THE HONORABLE JANE M. BECKERING, U.S. DISTRICT JUDGE

GRAND RAPIDS, MICHIGAN - FRIDAY, MARCH 25, 2022

APPEARANCES.

For the Plaintiff: AUSTIN JACOB HAKES
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For the Defendant: HELEN C. NIEUWENHUIS
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ALSO PRESENT: MYKAEL LEE BOOKER, Defendant

REPORTED BY: MELINDA I. DEXTER, CSR-4629, RMR, CRR
U.S. District Official Court Reporter
602 Federal Building
110 Michigan St., NW
Grand Rapids, MI 49503

10:59AM 1 Grand Rapids, Michigan

10:59AM 2 Friday, March 25, 2022

10:59AM 3 10:59 a.m.

10:59AM 4 THE CLERK: All rise, please.

10:59AM 5 The United States District Court for the Western

10:59AM 6 District of Michigan, the Honorable Jane M. Beckering, United

10:59AM 7 States District Judge, presiding.

10:59AM 8 All persons having business before this court draw

10:59AM 9 near, give attention, and you shall be heard. God save these

10:59AM 10 United States and this Honorable Court.

10:59AM 11 This court is now in session. Please be seated.

10:59AM 12 THE COURT: Good morning, everyone.

10:59AM 13 MR. HAKES: Morning, Your Honor.

10:59AM 14 MS. NIEUWENHUIS: Morning.

10:59AM 15 THE COURT: This is the date and time for a hearing

10:59AM 16 on a change of plea in the matter of the United States of

11:00AM 17 America versus Mykael Lee Booker.

11:00AM 18 May I have the appearances of counsel and

11:00AM 19 introductions, please.

11:00AM 20 MR. HAKES: Good morning, Your Honor. Austin Hakes

11:00AM 21 on behalf of the United States.

11:00AM 22 THE COURT: Morning.

11:00AM 23 MS. NIEUWENHUIS: And Helen Nieuwenhuis on behalf of

11:00AM 24 Mr. Booker, Your Honor, and Mr. Booker actually does pronounce

11:00AM 25 his name Michael.

11:00AM 1 THE COURT: Michael. Thank you. I was going to ask
11:00AM 2 at the beginning.

11:00AM 3 Mr. Booker, nice to meet you.

11:00AM 4 THE DEFENDANT: Nice to meet you too.

11:00AM 5 THE COURT: It's my understanding -- and we'll talk
11:00AM 6 about the background here -- Mr. Booker stands guilty by way
11:00AM 7 of a guilty plea to Count 1 of the Superseding Indictment,
11:00AM 8 which is a conspiracy to distribute and possess with intent to
11:00AM 9 distribute 500 grams or more of cocaine, as well as Count 3,
11:00AM 10 which is felon in possession of ammunition, and that's ECF 44.

11:00AM 11 Today he stands accused in the Third Superseding
11:00AM 12 Indictment to Count 2, which is possession with intent to
11:00AM 13 distribute cocaine base, and Count 3, which is possession of a
11:01AM 14 firearm in furtherance of drug trafficking.

11:01AM 15 Trial is currently scheduled to begin on Tuesday,
11:01AM 16 April 12th, and my understanding is that Mr. Booker and the
11:01AM 17 Government, and I've read the written plea agreement, have
11:01AM 18 entered into that plea. And Mr. Booker would like to enter
11:01AM 19 into a plea of guilty to Count 2 today.

11:01AM 20 Is that correct?

11:01AM 21 MS. NIEUWENHUIS: That is correct, Your Honor.

11:01AM 22 THE COURT: All right.

11:01AM 23 Mr. Booker, are you ready to proceed today?

11:01AM 24 THE DEFENDANT: Yes, ma'am.

11:01AM 25 THE COURT: All right. Before I take your plea, I

11:01AM 1 need to make sure of two things:

11:01AM 2 One is that you are able to understand what I am

11:01AM 3 saying. I'm going to go through all of your rights, and I

11:01AM 4 know that you have -- have a lot of things in the written plea

11:01AM 5 agreement, but we're going to do that in open court today

11:01AM 6 too --

11:01AM 7 THE DEFENDANT: Okay.

11:01AM 8 THE COURT: -- to make sure you understand me, and I

11:01AM 9 want to make sure that you are of the right frame of mind

11:01AM 10 today that you are making a decision about this case and its

11:02AM 11 significant impact on you and your life and that you feel

11:02AM 12 ready to make that decision today.

11:02AM 13 Do you understand?

11:02AM 14 THE DEFENDANT: Yes, ma'am.

11:02AM 15 THE COURT: If you decide to plead guilty, the first

11:02AM 16 right that you are going to give up is your right to remain

11:02AM 17 silent and to not have that silence used against you. You are

11:02AM 18 going to be placed under oath, and you'll be asked questions,

11:02AM 19 including what makes you believe that you are guilty of the

11:02AM 20 charged offense. You'll be subject to the rules of perjury

11:02AM 21 should anything that you say today not be true.

11:02AM 22 Do you understand that?

11:02AM 23 THE DEFENDANT: Yes, ma'am.

11:02AM 24 THE COURT: All right. Do you still wish to proceed?

11:02AM 25 THE DEFENDANT: Yes, ma'am.

11:02AM 1 THE COURT: All right. I'll ask Mr. Wolters to swear
11:02AM 2 you in. Would you stand and raise your right hand.
11:02AM 3 THE CLERK: Raise your right hand.
11:02AM 4 (*MYKAEL LEE BOOKER, DEFENDANT, WAS DULY SWEORN*)
11:02AM 5 THE DEFENDANT: Yes, sir.
11:02AM 6 THE CLERK: Thank you. Please be seated.
11:03AM 7 THE COURT: Could you state your full name for the
11:03AM 8 record.
11:03AM 9 THE DEFENDANT: My name is Mykael Lee Booker.
11:03AM 10 THE COURT: And could you speak up because I'm not
11:03AM 11 the best of hearing myself.
11:03AM 12 THE DEFENDANT: Can you hear me?
11:03AM 13 THE COURT: I can.
11:03AM 14 THE DEFENDANT: My name is Mykael Lee Booker.
11:03AM 15 THE COURT: Thank you. Where were you born,
11:03AM 16 Mr. Booker?
11:03AM 17 THE DEFENDANT: Grand Rapids, Michigan.
11:03AM 18 THE COURT: And are you -- you were born in America,
11:03AM 19 and you are an American citizen?
11:03AM 20 THE DEFENDANT: Yes, ma'am.
11:03AM 21 THE COURT: How far did you go in school?
11:03AM 22 THE DEFENDANT: Partial first year of college.
11:03AM 23 THE COURT: Partial first year of college?
11:03AM 24 THE DEFENDANT: Right.
11:03AM 25 THE COURT: So you can read and write and understand

11:03AM 1 the English language well?

11:03AM 2 THE DEFENDANT: Yes, ma'am.

11:03AM 3 THE COURT: Do you have any mental, physical, or

11:03AM 4 emotional issues that would make it difficult for you to

11:03AM 5 understand what is going on in court today?

11:03AM 6 THE DEFENDANT: No, ma'am.

11:03AM 7 THE COURT: Do you have any medications, or have you

11:03AM 8 had any drugs or alcohol in the past 24 hours?

11:03AM 9 THE DEFENDANT: No, ma'am.

11:03AM 10 THE COURT: Is anything causing you to be sleepy or

11:04AM 11 drowsy or that will prevent you from understanding?

11:04AM 12 THE DEFENDANT: No, ma'am.

11:04AM 13 THE COURT: Ms. Nieuwenhuis, do you believe that your

11:04AM 14 client is competent to proceed?

11:04AM 15 MS. NIEUWENHUIS: I do, Your Honor.

11:04AM 16 THE COURT: And do either counsel have any indication

11:04AM 17 or any reason that it is not appropriate for us to proceed

11:04AM 18 with a plea today?

11:04AM 19 MR. HAKES: Nothing from the Government on that

11:04AM 20 matter.

11:04AM 21 MS. NIEUWENHUIS: No, Your Honor.

11:04AM 22 THE COURT: All right.

11:04AM 23 Mr. Booker, you have been represented by

11:04AM 24 Ms. Nieuwenhuis. You know that you have a right to counsel

11:04AM 25 now, and were you to take it to trial, you'd have a right to

11:04AM 1 an attorney throughout that entire process, correct?

11:04AM 2 THE DEFENDANT: Yes, ma'am.

11:04AM 3 THE COURT: Even if you were to lose an appeal,

11:04AM 4 right?

11:04AM 5 THE DEFENDANT: Yes, ma'am.

11:04AM 6 THE COURT: All right. Are you satisfied with

11:04AM 7 Ms. Nieuwenhuis's representation so far?

11:04AM 8 THE DEFENDANT: Yes, ma'am.

11:04AM 9 THE COURT: And you've had a chance to read the

11:04AM 10 written plea agreement with her and you fully understand what

11:04AM 11 that entails?

11:04AM 12 THE DEFENDANT: Yes, ma'am.

11:04AM 13 THE COURT: Okay. And she's answered any and all

11:05AM 14 questions you have to your satisfaction?

11:05AM 15 THE DEFENDANT: Yes.

11:05AM 16 THE COURT: Great. I want to talk about the

11:05AM 17 Indictment and the elements and the maximum penalties. We'll

11:05AM 18 talk about sentencing. We'll talk about the plea agreement

11:05AM 19 and -- to make sure that you understand all of that before I

11:05AM 20 then take your plea. So let's start with the Indictment.

11:05AM 21 You've read that Third Superseding Indictment,

11:05AM 22 correct?

11:05AM 23 THE DEFENDANT: Yes.

11:05AM 24 THE COURT: And do you waive -- you have a right to

11:05AM 25 an open reading of that which you would make a plea at. Do

11:05AM 1 you agree to waive that today?

11:05AM 2 THE DEFENDANT: Yes, ma'am.

11:05AM 3 THE COURT: All right. What we'll do is summarize
11:05AM 4 that. All right. Let's see here.

11:05AM 5 Mr. Hakes, let's talk about what we're facing here, a
11:05AM 6 taking of a plea to Count 2. Would you summarize the factual
11:05AM 7 basis. I know you probably have that from the written plea
11:05AM 8 agreement. There is a paragraph there.

11:06AM 9 MR. HAKES: I do, Your Honor. It's reflected in
11:06AM 10 paragraph 6 of the written plea agreement, but I can explain,
11:06AM 11 you know, if Mr. Booker were to proceed to trial on this
11:06AM 12 count, the Government would present proofs as follows:

11:06AM 13 On or about November 22, 2020, law enforcement
11:06AM 14 partners in this case, to include people working in
11:06AM 15 conjunction with the Drug Enforcement Administration, executed
11:06AM 16 a federal search warrant at an apartment in Kentwood,
11:06AM 17 Michigan. Mr. Booker was found inside that apartment located
11:06AM 18 on a Wingate Avenue, and inside there were multiple pieces of
11:06AM 19 evidence indicative of drug trafficking, to include digital
11:06AM 20 scales, and, perhaps most importantly, approximately 7.6 grams
11:06AM 21 of cocaine base on the kitchen table.

11:06AM 22 We would also bring forth the testimony of a drug
11:06AM 23 trafficking expert to explain that 7.6 grams of cocaine base
11:06AM 24 is more than a single use dose of cocaine base and is
11:06AM 25 indicative of an intent to distribute to other people.

1 Besides the evidence that was collected on that date,
2 there would be evidence in the form of wire intercepted calls
3 in which Mr. Booker is overheard discussing what appears to be
4 trafficking in cocaine with other members of a conspiracy.
5 That would also be an additional basis of the intent to
6 distribute element of this offense. And I think that would be
7 the facts that the Government would prove in this case if it
8 were to proceed to trial.

9 THE COURT: All right. And would you also identify
10 the elements of the offense for Count 2.

11 MR. HAKES: Certainly, Your Honor. So there are two
12 elements in possession with intent to distribute a controlled
13 substance. In this case, the controlled substance alleged is
14 cocaine base, also known as crack cocaine.

15 To be guilty of this offense, the following must be
16 true: First, the Defendant must have knowingly possessed a
17 mixture containing a detectible amount of cocaine base; and,
18 second, the Defendant must have intended to distribute the
19 controlled substances.

20 THE COURT: Thank you.

With regard to Count 2, which is an offense under 21 U.S.C. 841 (a)(1) and (b)(1)(c), the maximum penalty is not more than 20 years' imprisonment and a \$1 million fine. As well, not less than three years and up to life of supervised release and a mandatory special assessment of \$100.

11:08AM 1 Mr. Hakes, is it my understanding there are no
11:08AM 2 mandatory minimums, correct?

11:08AM 3 MR. HAKES: That's correct. There are none
11:08AM 4 associated with this count, Your Honor.

11:08AM 5 THE COURT: And that the sentences would be
11:08AM 6 concurrent?

11:08AM 7 MR. HAKES: It would be up to the Court's discretion.
11:08AM 8 There is no requirement that it be run consecutive,
11:08AM 9 Your Honor.

11:08AM 10 THE COURT: Okay. Thank you.

11:08AM 11 And I understand there is also some forfeiture
11:08AM 12 agreement about forfeiture as well. Is that true?

11:08AM 13 MR. HAKES: Yes. And they are reflected in the
11:08AM 14 written plea agreement in this case, Your Honor.

11:08AM 15 THE COURT: All right. I know he -- at this point
11:08AM 16 there is forfeiture allegations as with regard to all existing
11:08AM 17 counts.

11:08AM 18 Any questions at this point, Mr. Booker, about the
11:09AM 19 Indictment and the maximum penalties?

11:09AM 20 THE DEFENDANT: No, ma'am.

11:09AM 21 THE COURT: All right. Per the Sentencing Reform Act
11:09AM 22 of 1984, the U.S. Sentencing Commission issued advisory
11:09AM 23 guidelines, including a very thick manual for judges to
11:09AM 24 consult when determining a sentence.

11:09AM 25 Mr. Booker, have you been convicted in federal court

11:09AM 1 before?

11:09AM 2 THE DEFENDANT: No, ma'am. I haven't.

11:09AM 3 THE COURT: All right. Have you been convicted in

11:09AM 4 state court before?

11:09AM 5 THE DEFENDANT: Yes.

11:09AM 6 THE COURT: All right. The mandatory -- there are no

11:09AM 7 more mandatory sentencing guidelines in either actually

11:09AM 8 Michigan or the federal court. The courts must calculate the

11:09AM 9 guidelines and they must take those guidelines into account,

11:09AM 10 but they are not bound by those guidelines. They're bound to

11:09AM 11 individually determine your sentence with those considerations

11:09AM 12 in mind.

11:10AM 13 Have you had a chance to talk with your lawyer about

11:10AM 14 the U.S. sentencing guidelines? Do you have a general

11:10AM 15 understanding of how they work?

11:10AM 16 THE DEFENDANT: Yes.

11:10AM 17 THE COURT: You understand that if you plead guilty,

11:10AM 18 the probation department will have someone who will thoroughly

11:10AM 19 evaluate your history, your prior criminal record, other

11:10AM 20 circumstances of you and the offense at issue, and they

11:10AM 21 provide us with a very detailed report. They also calculate

11:10AM 22 what they believe to be the guidelines.

11:10AM 23 Do you understand that to be the case?

11:10AM 24 THE DEFENDANT: Yes, ma'am.

11:10AM 25 THE COURT: And you understand it is the Court's

11:10AM 1 obligation, then, to determine what the scoring is, which may
11:10AM 2 or may not be in accord with what the probation agent believes
11:10AM 3 those scores to be.

11:10AM 4 THE DEFENDANT: Yes, ma'am, I do.

11:10AM 5 THE COURT: You understand that at this point, you
11:10AM 6 may have estimated what those guidelines are, but we do not
11:10AM 7 know what they are until we get that report.

11:10AM 8 You understand that?

11:10AM 9 THE DEFENDANT: Yes, ma'am.

11:10AM 10 THE COURT: You also understand that you will play a
11:11AM 11 role in participating in the preparation of that probation
11:11AM 12 report. If there is anything that you feel is inaccurate or
11:11AM 13 incomplete, you can contribute to that process.

11:11AM 14 THE DEFENDANT: Yes, ma'am, I do.

11:11AM 15 THE COURT: And you also have an opportunity to
11:11AM 16 object to anything that you find is inaccurate. So I will not
11:11AM 17 calculate those guidelines until both the U.S. Attorney, the
11:11AM 18 Government, and your -- your attorney have an opportunity to
11:11AM 19 review that and lodge any objections.

11:11AM 20 Do you understand that?

11:11AM 21 THE DEFENDANT: Yes, ma'am.

11:11AM 22 THE COURT: After the guidelines are calculated, the
11:11AM 23 Court is also obligated to evaluate a proper sentence for you
11:11AM 24 under what is called -- it's 18 U.S.C. 3553(a) factors.

11:11AM 25 You understand that?

11:11AM 1 THE DEFENDANT: Yes, ma'am, I do.

11:11AM 2 THE COURT: So when you and I meet probably three

11:12AM 3 months from now, we will talk about your particular

11:12AM 4 circumstance, and I will be evaluating your sentence and

11:12AM 5 making a determination based on several factors, including the

11:12AM 6 nature of the offense, the circumstances of you, the offender.

11:12AM 7 I need to take into account in my decision-making the

11:12AM 8 seriousness of the offense, I have to promote respect for the

11:12AM 9 law, and I have to provide just punishment. The sentence must

11:12AM 10 provide deterrence to you and to others to avoid committing

11:12AM 11 crimes of this nature going forward.

11:12AM 12 I also consider the need to provide you with

11:12AM 13 educational or vocational and correctional treatment for

11:12AM 14 remediation efforts. I need to consider the kinds of

11:12AM 15 sentencing's available based on where you fall in the

11:12AM 16 guidelines scoring. I need to avoid unwarranting [sic]

11:13AM 17 sentencing disparities among similarly situated Defendants.

11:13AM 18 We try to be as equal as possible under the law.

11:13AM 19 I may also consider variance requests, including by

11:13AM 20 your counsel, to go above or below the guidelines, and we will

11:13AM 21 talk about those at the time.

11:13AM 22 Do you understand the idea of the departures and the

11:13AM 23 variance?

11:13AM 24 THE DEFENDANT: Yes. Yes, ma'am, I do.

11:13AM 25 THE COURT: Okay. Great. You understand I have the

11:13AM 1 authority to go above the guidelines range?

11:13AM 2 THE DEFENDANT: Yes, ma'am.

11:13AM 3 THE COURT: And below it, correct?

11:13AM 4 THE DEFENDANT: Yes, ma'am.

11:13AM 5 THE COURT: You understand that whatever sentence I

11:13AM 6 impose, if you don't agree to it, you don't have an

11:13AM 7 opportunity to withdraw your plea.

11:13AM 8 You understand that?

11:13AM 9 THE DEFENDANT: Yes, ma'am.

11:13AM 10 THE COURT: Has anyone made you any promises about

11:13AM 11 what your sentence will be?

11:13AM 12 THE DEFENDANT: No, ma'am.

11:13AM 13 THE COURT: And do you understand Michigan, there is

11:13AM 14 no parole?

11:13AM 15 THE DEFENDANT: Yes. Yes, ma'am.

11:13AM 16 THE COURT: What we have is supervised release, and

11:13AM 17 that is you will do the time to which you are sentenced with

11:14AM 18 15 percent credit. Then you are placed on supervised release,

11:14AM 19 which is the Court, through the probation department,

11:14AM 20 supervising your conduct, and you are to follow certain

11:14AM 21 requirements in that regard.

11:14AM 22 THE DEFENDANT: Yes, ma'am.

11:14AM 23 THE COURT: Do you understand that if you violate the

11:14AM 24 terms of that supervised release, it is possible that through

11:14AM 25 those violations, you would serve more time than the maximum

11:14AM 1 sentence of the offense?

11:14AM 2 THE DEFENDANT: Yes, ma'am, I do.

11:14AM 3 THE COURT: You are currently detained, correct?

11:14AM 4 THE DEFENDANT: Yes, ma'am.

11:14AM 5 THE COURT: And you understand that --

11:14AM 6 Under the nature of the crime, is it currently he

11:14AM 7 will remain detained until sentencing?

11:14AM 8 MR. HAKES: That's correct, Your Honor.

11:14AM 9 THE COURT: All right.

11:14AM 10 We'll move on to other consequences of your plea

11:14AM 11 today. If convicted of a felony, you may be deprived of

11:14AM 12 certain rights, including the right to vote, hold office,

11:14AM 13 serve on a jury, and possess firearms.

11:14AM 14 Do you understand that?

11:14AM 15 THE DEFENDANT: Yes, ma'am.

11:14AM 16 THE COURT: You are a U.S. citizen, but if you were

11:15AM 17 not, you could be removed from the country and denied reentry.

11:15AM 18 Do you understand that?

11:15AM 19 THE DEFENDANT: Yes, ma'am, I do.

11:15AM 20 THE COURT: You understand that if you are currently

11:15AM 21 on probation or parole in another case, that this could affect

11:15AM 22 your status in that regard?

11:15AM 23 THE DEFENDANT: Yes, ma'am.

11:15AM 24 THE COURT: Are you on parole anywhere else or

11:15AM 25 probation?

11:15AM 1 THE DEFENDANT: I'm on probation for Kent County.

11:15AM 2 THE COURT: Okay. So that -- this may have

11:15AM 3 consequences.

11:15AM 4 You understand that?

11:15AM 5 THE DEFENDANT: Yes.

11:15AM 6 THE COURT: You understand all of the penalties so

11:15AM 7 far that we've discussed?

11:15AM 8 THE DEFENDANT: Yes, ma'am, I do.

11:15AM 9 THE COURT: I know you read your written plea

11:15AM 10 agreement, and you talked about the rights you'll be giving

11:15AM 11 up, but I want to read those in open court as well to make

11:15AM 12 sure that you understand that.

11:15AM 13 You have the following rights: And that's to plead

11:15AM 14 not guilty and persist in that plea.

11:15AM 15 You understand that?

11:15AM 16 THE DEFENDANT: Yes.

11:15AM 17 THE COURT: You have the right to the presumption of

11:15AM 18 innocence until proven guilty.

11:15AM 19 You understand?

11:15AM 20 THE DEFENDANT: Yes, ma'am.

11:15AM 21 THE COURT: You have the right to a trial by jury

11:16AM 22 with the assistance of counsel and one to be appointed for you

11:16AM 23 if you cannot afford that.

11:16AM 24 You understand that?

11:16AM 25 THE DEFENDANT: Yes, ma'am.

11:16AM 1 THE COURT: You have at least 30 days to prepare for
11:16AM 2 trial from the date of your first appearance through counsel.
11:16AM 3 Do you understand that?
11:16AM 4 THE DEFENDANT: Yes, ma'am.
11:16AM 5 THE COURT: And you have the right to confront and
11:16AM 6 cross-examine witnesses against you.
11:16AM 7 Do you understand that?
11:16AM 8 THE DEFENDANT: Yes, ma'am.
11:16AM 9 THE COURT: You also understand that you need not
11:16AM 10 present any evidence in your defense.
11:16AM 11 Do you understand?
11:16AM 12 THE DEFENDANT: Yes. Yes, ma'am.
11:16AM 13 THE COURT: And you also may call witnesses on your
11:16AM 14 behalf and compel their attendance.
11:16AM 15 Do you understand that?
11:16AM 16 THE DEFENDANT: Yes, ma'am.
11:16AM 17 THE COURT: And as we talked about, you have the
11:16AM 18 right to remain silent and not be compelled to incriminate
11:16AM 19 yourself or the right to testify should you chose to do so.
11:16AM 20 Understand?
11:16AM 21 THE DEFENDANT: Yes, ma'am.
11:16AM 22 THE COURT: And you ultimately have the right to hold
11:16AM 23 the Government to its proofs beyond a reasonable doubt.
11:16AM 24 Do you understand that?
11:16AM 25 THE DEFENDANT: Yes, ma'am.

11:16AM 1 THE COURT: If you plead guilty, there will be no
11:17AM 2 trial, and you will give up all of those rights I just
11:17AM 3 described.
11:17AM 4 Do you understand?
11:17AM 5 THE DEFENDANT: Yes, ma'am.
11:17AM 6 THE COURT: And we'll talk about the plea agreement
11:17AM 7 in a minute. There are certain rights to appeal that you'll
11:17AM 8 be giving up as well.
11:17AM 9 Do you understand that?
11:17AM 10 THE DEFENDANT: Yes, ma'am, I do.
11:17AM 11 THE COURT: All right. Let's talk about -- at this
11:17AM 12 point I'm going to take your plea, and then we'll talk about
11:17AM 13 some of the details of the plea agreement.
11:17AM 14 So as to Count 2 of the Third Superseding Indictment,
11:17AM 15 possession with intent to distribute cocaine base, Mr. Booker,
11:17AM 16 how do you plead?
11:17AM 17 THE DEFENDANT: I plead guilty, Your Honor.
11:17AM 18 THE COURT: Is your plea the result of any force,
11:17AM 19 threats, or promises apart from the plea agreement?
11:17AM 20 THE DEFENDANT: No, ma'am.
11:17AM 21 THE COURT: Is your decision to plead guilty
11:17AM 22 voluntary and an act of free will?
11:17AM 23 THE DEFENDANT: Yes, ma'am.
11:17AM 24 THE COURT: Are you pleading guilty because you are,
11:17AM 25 in fact, guilty of the offense set forth in Count 2 of the

11:17AM 1 Third Superseding Indictment?

11:17AM 2 THE DEFENDANT: Yes, ma'am, I am.

11:18AM 3 THE COURT: All right. Let's discuss the terms of

11:18AM 4 the plea agreement.

11:18AM 5 Mr. Hakes, could you describe pertinent portions of

11:18AM 6 that plea agreement?

11:18AM 7 MR. HAKES: Certainly, Your Honor. The first

11:18AM 8 paragraph in the plea agreement relates the Defendant's

11:18AM 9 promise to plead guilty to Count 2 of the Third Indictment,

11:18AM 10 which he has just done moments ago.

11:18AM 11 The second paragraph explains the elements of the

11:18AM 12 offense.

11:18AM 13 The third paragraph outlines the maximum penalties.

11:18AM 14 Those elements and penalties are the same as have been relayed

11:18AM 15 to Mr. Booker here today in court.

11:18AM 16 Chapter 4 defines supervised release again with the

11:18AM 17 information that Mr. Booker has been provided here today, and

11:18AM 18 paragraph 5 discusses the sentencing guidelines.

11:18AM 19 Paragraph 6 describes a factual basis of Mr. Booker's

11:18AM 20 guilt, and paragraph 7 discusses asset forfeiture both in

11:18AM 21 pertaining to his previous offenses of conviction arising from

11:18AM 22 the Superseding Indictment in this case, as well as his

11:19AM 23 offense of conviction of Count 2 of the Third Superseding

11:19AM 24 Indictment here.

11:19AM 25 Paragraph 8 describes the United States Attorney's

11:19AM 1 Office promises in this case. Most importantly to Mr. Booker,
11:19AM 2 the Government is agreeing to dismiss Count 4 in this -- let
11:19AM 3 me make sure I just recited it --

11:19AM 4 THE COURT: Count 3?

11:19AM 5 MR. HAKES: Count 3, my apologies. Count 3 against
11:19AM 6 Mr. Booker in the Third Superseding Indictment, which alleges
11:19AM 7 possession of a firearm in furtherance of drug trafficking.

11:19AM 8 The dismissal will happen at the time of sentencing
11:19AM 9 at which time the Government will also move to dismiss any
11:19AM 10 remaining charges filed against Mr. Booker in any of the
11:19AM 11 underlying charging instruments.

11:19AM 12 Paragraph 9 just relates that there is no agreement
11:19AM 13 about the final sentencing guideline range in this case.

11:19AM 14 And paragraph 10 discusses a waiver of Mr. Booker's
11:19AM 15 constitutional rights. Those are rights that the Court has
11:19AM 16 just gone over with Mr. Booker.

11:19AM 17 Paragraph 11 discusses a waiver of appeal and
11:19AM 18 collateral attack in this case and explains that Mr. Booker is
11:19AM 19 waiving both of those rights with six limited exceptions that
11:20AM 20 are described in paragraph 11(b). Those exceptions are:

11:20AM 21 If the Defendant's sentence on any count or
11:20AM 22 conviction exceeded the statutory maximum for that count;

11:20AM 23 If the Defendant's sentence was based on an
11:20AM 24 unconstitutional factor, such as race, religion, national
11:20AM 25 origin, or gender;

11:20AM 1 If the district court incorrectly determined the
11:20AM 2 sentencing guideline range if the Defendant objects at
11:20AM 3 sentencing on that basis;
11:20AM 4 If the Defendant's sentence is above the sentencing
11:20AM 5 guideline range as determined by the Court at sentencing and
11:20AM 6 is unreasonable;
11:20AM 7 If the guilty plea was involuntary or unknowing;
11:20AM 8 And, finally, if the attorney who represented
11:20AM 9 Mr. Booker during the course of this criminal case provided
11:20AM 10 ineffective assistance of counsel.
11:20AM 11 Paragraph 12 concerns -- contains a waiver of any
11:20AM 12 rights Mr. Booker may have under the Freedom of Information
11:20AM 13 Act.
11:20AM 14 Paragraph 13 just makes clear that this is an
11:20AM 15 agreement between the United States Attorney's Office for the
11:20AM 16 Western District of Michigan and Mr. Booker and does not
11:20AM 17 include the Court as a party.
11:20AM 18 Paragraph 14 again explains that the agreement is
11:21AM 19 limited to the parties and doesn't bind any other portion of
11:21AM 20 the federal government or state or local jurisdictions.
11:21AM 21 Paragraph 15 explains what the consequences of a
11:21AM 22 breach will be; namely, that both parties will go back to the
11:21AM 23 position they were before signing this agreement, which is
11:21AM 24 proceeding to trial.
11:21AM 25 And paragraph 16 explains that this is the complete

11:21AM 1 agreement and there aren't any promises besides what has been
11:21AM 2 written down there and filed with the Court.
11:21AM 3 That's a summary, Your Honor.
11:21AM 4 THE COURT: Thank you, Mr. Hakes.
11:21AM 5 Mr. Booker, I see that you have a document in front
11:21AM 6 of you.
11:21AM 7 Is that the written plea agreement?
11:21AM 8 THE DEFENDANT: Yes.
11:21AM 9 THE COURT: And have you read that in its entirety?
11:21AM 10 THE DEFENDANT: Yes, ma'am, I have.
11:21AM 11 THE COURT: And I see a signature page with a date of
11:21AM 12 3-24-22.
11:21AM 13 Is that your signature?
11:21AM 14 THE DEFENDANT: Yes, ma'am.
11:21AM 15 THE COURT: Did you sign this agreement on March 24th
11:21AM 16 of 2022?
11:21AM 17 THE DEFENDANT: Yes, ma'am, I did.
11:21AM 18 THE COURT: Ms. Nieuwenhuis, is there any additional
11:21AM 19 salient parts of that written plea agreement you'd like to
11:21AM 20 address for the record?
11:21AM 21 MS. NIEUWENHUIS: No, Your Honor. Thank you.
11:21AM 22 THE COURT: Is there anything in that plea agreement
11:22AM 23 that is unclear to you or that you don't understand or about
11:22AM 24 you have any questions at this time?
11:22AM 25 THE DEFENDANT: No. Not at this moment, Your Honor.

11:22AM 1 THE COURT: Ms. Nieuwenhuis, are you aware of any
11:22AM 2 promises, threats, or inducement other than those in the plea
11:22AM 3 agreement or discussed on the record?

11:22AM 4 MS. NIEUWENHUIS: I am not, Your Honor.

11:22AM 5 THE COURT: The Court has two decisions to make
11:22AM 6 associated with this change of plea hearing:

11:22AM 7 One is whether to accept your guilty plea to Count 2,
11:22AM 8 and the other is whether to accept the plea agreement. These
11:22AM 9 are separate matters. The Court's role with the plea
11:22AM 10 agreement is to make sure that it reflects the best interest
11:22AM 11 of justice.

11:22AM 12 I will decide today whether to accept the plea if
11:22AM 13 it's voluntary, you understand it, and there is an adequate
11:22AM 14 factual basis, but I won't decide whether to accept the plea
11:22AM 15 agreement until after I review the presentencing report.

11:23AM 16 Any questions about that?

11:23AM 17 THE DEFENDANT: So I don't really -- I don't really
11:23AM 18 get what you're saying. So the plea agreement is not -- I
11:23AM 19 don't get that part. I'm kind of lost. You saying that you
11:23AM 20 accept the plea but not the agreement yet?

11:23AM 21 THE COURT: Right. The plea doesn't bind me.

11:23AM 22 THE DEFENDANT: Okay.

11:23AM 23 THE COURT: It binds the parties and how you will
11:23AM 24 proceed with one another. It does not bind the Court. So
11:23AM 25 what I'll decide today is whether or not you're entering this

11:23AM 1 plea voluntarily, willingly, and knowingly.

11:23AM 2 THE DEFENDANT: Okay.

11:23AM 3 THE COURT: Once I read the presentence report and I

11:23AM 4 feel the agreement that you've made between you and the

11:23AM 5 Government is fair, then I will decide whether to accept it.

11:23AM 6 THE DEFENDANT: Okay.

11:23AM 7 THE COURT: Does that make sense?

11:23AM 8 THE DEFENDANT: Yeah, it does.

11:23AM 9 THE COURT: Okay. Any other questions on that front?

11:23AM 10 THE DEFENDANT: No, ma'am.

11:23AM 11 THE COURT: All right.

11:23AM 12 I had you, Mr. Hakes, summarize the factual basis to

11:24AM 13 the offense. Is there anything more you want to add about the

11:24AM 14 factual basis for which this plea is being taken today?

11:24AM 15 MR. HAKES: Not at this time, Your Honor, no.

11:24AM 16 THE COURT: All right.

11:24AM 17 Mr. Booker, we talked about the elements of the

11:24AM 18 offense, and Mr. Hakes talked to you about what evidence he

11:24AM 19 would bring at trial. I do need to hear in your own words why

11:24AM 20 you believe you are guilty of this offense and -- unless you

11:24AM 21 want to read the statement of the written plea agreement and

11:24AM 22 adopt that as your own, but I need to hear from you what you

11:24AM 23 did that makes you guilty.

11:24AM 24 So would you be able to do that at this time?

11:24AM 25 THE DEFENDANT: Yes, ma'am. I believe because on

11:24AM 1 November 22nd I possessed controlled substance of cocaine
11:24AM 2 base, and had the intentions to distribute it to others, it
11:24AM 3 makes me guilty of Count 2 in Kentwood, Michigan.

11:25AM 4 THE COURT: And did you possess 6. -- 7.6 grams of
11:25AM 5 cocaine base?

11:25AM 6 THE DEFENDANT: Yes, ma'am, I did.

11:25AM 7 THE COURT: That was found on your kitchen table?

11:25AM 8 THE DEFENDANT: Yes.

11:25AM 9 THE COURT: And you knew about that cocaine base,
11:25AM 10 correct?

11:25AM 11 THE DEFENDANT: Yes, ma'am. I knew it was there.

11:25AM 12 THE COURT: And had the ability to control it.

11:25AM 13 THE DEFENDANT: Yes, ma'am, I did.

11:25AM 14 THE COURT: Mr. Hakes, is there anything else you
11:25AM 15 would like to elicit in terms of testimony from Mr. Booker in
11:25AM 16 that regard?

11:25AM 17 MR. HAKES: Your Honor, I think that is legally
11:25AM 18 sufficient.

11:25AM 19 THE COURT: Both parties are satisfied with the
11:25AM 20 factual basis of the plea?

11:25AM 21 MS. NIEUWENHUIS: I am, Your Honor.

11:25AM 22 THE COURT: Thank you.

11:25AM 23 At this time, I find that Mr. Booker understands the
11:25AM 24 nature of the charges and the penalties provided by law. I
11:26AM 25 find that the plea is made knowingly and with full

11:26AM 1 understanding of each of the rights explained to Mr. Booker,
11:26AM 2 and it's made voluntarily and free from any force, threats, or
11:26AM 3 promises apart from the plea agreement.

11:26AM 4 I also find that the plea has a sufficient factual
11:26AM 5 basis. I accept the plea, and I adjudicate Mr. Booker guilty
11:26AM 6 of Count 2 of the Third Superseding Indictment.

11:26AM 7 With regard to the plea agreement, we'll talk about
11:26AM 8 that again when we next meet at sentencing. With regard to
11:26AM 9 sentencing, we'll schedule a hearing in the next 90 to
11:26AM 10 120 days to give the probation department sufficient time to
11:26AM 11 do a thorough and adequate job in that report.

11:26AM 12 Again, as I noted earlier, you will have an
11:26AM 13 opportunity to participate and provide input in that.

11:26AM 14 And, Ms. Nieuwenhuis, I remind you of your obligation
11:27AM 15 to comply with the local rules regarding the presentence
11:27AM 16 report, preparations, interviews, and conferences. So make
11:27AM 17 sure you give your input and that you're comfortable with
11:27AM 18 everything in there.

11:27AM 19 THE DEFENDANT: Okay.

11:27AM 20 THE COURT: I understand you will be continued under
11:27AM 21 detention at this time.

11:27AM 22 Is there anything, Counselors, that I have neglected
11:27AM 23 to address or that you would like to bring before the Court
11:27AM 24 today?

11:27AM 25 MR. HAKES: No, Your Honor.

11:27AM 1 MS. NIEUWENHUIS: No, Your Honor. Thank you.

11:27AM 2 THE COURT: All right.

11:27AM 3 Again, when we come back, we will be dealing with

11:27AM 4 three counts: Of the Superseding Indictment, Counts 1 and 3;

11:27AM 5 and then Count 2 of the Third Superseding Indictment.

11:27AM 6 Is that correct?

11:27AM 7 THE DEFENDANT: Yes, ma'am.

11:27AM 8 MS. NIEUWENHUIS: That is correct.

11:27AM 9 MR. HAKES: Yes, Your Honor.

11:27AM 10 THE COURT: Thank you.

11:27AM 11 That is all for the record.

11:27AM 12 THE CLERK: All rise, please. This court is now

11:28AM 13 adjourned.

11:28AM 14 (At 11:28 a.m., the matter was

15 concluded.)

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1 *REPORTER'S CERTIFICATE*

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3 I, Melinda I. Dexter, Official Court Reporter for

4 the United States District Court for the Western District of

5 Michigan, appointed pursuant to the provisions of Title 28,

6 United States Code, Section 753, do hereby certify that the

7 foregoing is a full, true, and correct transcript of the

8 proceedings had in the within entitled and numbered cause on

9 the date hereinbefore set forth; and I do further certify

10 that the foregoing transcript has been prepared by me or

11 under my direction. WITNESS my hand this date, October 26,

12 2022.

13

14 

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